

PILLSBURY WINTHROP SHAW PITTMAN LLP
DAVID M. FURBUSH #83447
david.furbush@pillsburylaw.com
2550 Hanover Street
Palo Alto, CA 94304-1115
Telephone: (650) 233-4500 / Facsimile: (650) 233-4545

PILLSBURY WINTHROP SHAW PITTMAN LLP
JUSTIN L. BROSSIER #285443
justin.brossier@pillsburylaw.com
ELAINE Y. LEE #293452
elaine.lee@pillsburylaw.com
725 S. Figueroa Street, Suite 2800
Los Angeles, CA 90017-5406
Telephone: (213) 488-7100 / Facsimile: (213) 629-1033

Attorneys for Petitioner
CEEG (SHANGHAI) SOLAR SCIENCE & TECHNOLOGY CO., LTD.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION- LOS ANGELES

CEEG (SHANGHAI) SOLAR
SCIENCE & TECHNOLOGY CO.,
LTD.,

Petitioner,

vs.

SUNVALLEY SOLAR, INC.,

Respondent.

Case No. _____

PETITION TO CONFIRM
FOREIGN ARBITRATION
AWARD

1 Petitioner CEEG (Shanghai) Solar Science & Technology Co., Ltd.
2 (“Petitioner”), by its undersigned attorneys, states as follows:

3 **NATURE OF THE PROCEEDING**

4 1. Petitioner brings this Petition for the Court to confirm the Arbitral
5 Award issued by the Shanghai International Economic and Trade Arbitration
6 Commission (“SIETAC”) in favor of Petitioner and against Respondent
7 Sunvalley Solar, Inc.’s (“Respondent”), on December 10, 2013.

8 2. The Court has jurisdiction and authority to enforce the Arbitral
9 Award under the Convention on the Recognition and Enforcement of Foreign
10 Arbitral Awards (the “Convention”), incorporated into the Federal Arbitration
11 Act (the “FAA”), 9 U.S.C. §§ 201-208.

12 3. In its December 10, 2013 Arbitral Award, SIETAC awarded the
13 following amounts to Petitioner: (a) \$1,000,000.00 plus interest, which
14 SIETAC calculated as RMB 1,132,093.00 as of December 10, 2013; (b) RMB
15 520,900.00 in loss of currency exchange rate differentials; (c) RMB
16 185,955.80 in attorneys’ fees; and (d) RMB 186,283.00 in arbitration fees.
17 The Respondent was ordered to pay the amounts to Petitioner within thirty
18 days after the award was made. Respondent has failed to make any payments
19 pursuant to the Arbitral Award. A duly certified copy of the Arbitral Award
20 issued by SIETAC on December 10, 2013 is attached as **Exhibit “1”** to the
21 Declaration of David Zhang In Support Of Petition to Confirm Foreign
22 Arbitration Award (“D. Zhang Decl.”), filed concurrently herewith, and
23 incorporated herein by reference. Additionally, a certified translation of the
24 SIETAC Arbitral Award is attached to the D. Zhang Decl. as **Exhibit “2.”**

25 4. On January 17, 2013, Respondent filed an action in the Superior
26 Court of California against Petitioner and Defendant China Sunergy (Nanjing)
27 Co., Ltd. (“CSUN”), alleging causes of action for breach of contract,
28

1 intentional misrepresentation, negligent misrepresentation, and violation of
 2 California Business & Professions Code § 17200 in connection with the sale
 3 of Modules pursuant to the Distribution Contract and Sales Contracts “as far
 4 back as January 2010.” Petitioner and CSUN removed the action to this Court
 5 on July 6, 2015 pursuant to 9 U.S.C. § 203. The action was assigned to the
 6 Honorable Philip S. Gutierrez, Case Number 2:15-cv-05099-PSG-JPR.
 7 Respondent’s Motion to Remand and Petitioner and CSUN’s Motion to
 8 Compel Arbitration are both currently pending before Judge Gutierrez with
 9 hearings set for September 21, 2015 and November 2, 2015, respectively.

10 **THE PARTIES**

11 5. Petitioner is a corporation organized and existing under the laws
 12 of China.

13 6. Respondent is a corporation organized and existing under the
 14 laws of the State of Nevada with its principal place of business in Walnut,
 15 California.

16 **JURISDICTION AND VENUE**

17 7. This Court has subject matter jurisdiction over this action
 18 pursuant to 9 U.S.C. § 203.

19 8. Venue is proper in this District pursuant to 9 U.S.C. § 204 and 28
 20 U.S.C. § 1391(a), as Respondent is a resident of this District.

21 **BACKGROUND**

22 9. Petitioner manufactures crystalline photovoltaic modules
 23 (“Modules”) for use in solar powered systems and technology.

24 10. On July 30, 2008, Respondent entered into a Distribution
 25 Contract with Petitioner whereby Respondent agreed to purchase Modules
 26 from Petitioner. A true and correct copy of the Distribution Contract between
 27 Respondent and Petitioner is attached to the D. Zhang Decl. as **Exhibit “5.”**
 28

1 The Distribution Contract set forth the general terms for the manufacture and
2 sale of Modules by Petitioner to Respondent. By the terms of the Distribution
3 Contract, each transaction would also be subject to the terms of a “specific
4 purchase order,” which would set forth the types and quantities of Modules to
5 be sold, along with the applicable specifications, prices, and desired time of
6 delivery. In case of any “conflict” of terms between the specific purchase
7 order and the Distribution Contract, the Distribution Contract would apply.

8 11. On October 26, 2010, Respondent and Petitioner entered into
9 Sales Contract No. S69020054, whereby Respondent agreed to pay Petitioner
10 \$1,403,200.00 in exchange for Modules. On November 9, 2010, Respondent
11 and Petitioner entered into Sales Contract No. S69020055, whereby
12 Respondent agreed to pay Petitioner \$274,400.00 in exchange for Modules.
13 True and correct copies of Sales Contracts Nos. S69020054 and S69020055
14 (collectively, the “Sales Contracts”) are attached to the D. Zhang Decl. as
15 **Exhibits “6” and “7.”**

16 12. In addition to the terms of the transaction (a description of goods,
17 quantity of goods sold, price, payment and shipping terms, and other various
18 terms supplemental to the Distribution Contract), both Sales Contracts also
19 included an arbitration clause (the “Arbitration Provision”) that states:

20 “All disputes in connection with this Contract or the execution thereof
21 shall be settled friendly through negotiations. In case no settlement can
22 be reached, the case may then be submitted for arbitration to the China
23 International Economic and Trade Arbitration Commission Shanghai
24 Commission in accordance with its arbitration rules. The arbitration
25 shall take place in Shanghai and the decision of the Commission shall
26 be final and binding upon both parties; neither party shall seek recourse
27 to a law court or other authorities to appeal for revising of the decision.
28 The arbitration fee shall be borne by the losing party.”

13. Pursuant to the Sales Contracts, Petitioner delivered the Modules
contracted for and received a total of \$677,600.00 in payments from
Respondent.

THE ARBITRATION

14. On March 7, 2013, in accordance with the Arbitration Provision in the Sales Contracts, Petitioner initiated arbitration with SIETAC¹ for Respondent's failure to pay for Modules sold under the Sales Contracts. SIETAC accepted the arbitration on March 20, 2013 and sent the Notice of Acceptance/Arbitration, Arbitration Rules, and Roster of Arbitrators, along with Petitioner's application for arbitration and other materials submitted by Petitioner to Respondent. SIETAC assigned case number SG2013015 to the arbitration.

15. As stated by SIETAC in the Arbitral Award, on April 11, 2013, Mr. Bin Li, corporate counsel for Respondent, confirmed via e-mail that Respondent received the arbitration documents sent by SIETAC. Respondent also applied to suspend the arbitration or extend the deadline for responding. Petitioner opposed Respondent's application and Respondent did not submit a reply.

16. Following this exchange, SIETAC proceeded with selection of the arbitrators. Petitioner selected an arbitrator but Respondent did not. Petitioner and Respondent did not agree on selection of a chief arbitrator so SIETAC made an appointment. The arbitration tribunal was finalized on July 19, 2013 and SIETAC notified both Petitioner and Respondent.

17. The arbitration began on August 20, 2013 in Shanghai. Even though Respondent was duly notified of the start date and place, it failed to appear. Therefore, according to the SIETAC Arbitration Rules, the tribunal heard the case "by default." The tribunal heard Petitioner's case, evaluated the

¹ SIETAC, which is also known as Shanghai International Arbitration Center, was formerly known as China International Economic and Trade Arbitration Commission Shanghai Commission. *See Shanghai International Economic and Trade Arbitration Commission (Shanghai International Arbitration Center) Arbitration Rules (Effective as from May 1, 2013)*, Art. 2, ¶ 1, http://www.shiac.org/upload/day_130407/201304071023539471.pdf.

evidence before it, which consisted of the Sales Contracts, the relevant Bills of Lading, Packing Lists, Cargo Transportation Certificates, Invoices, and receipts, and conducted its inquiry and investigation. The Evidence List submitted by Petitioner to SIETAC in support of its case against Respondent is attached as **Exhibit “4”** to the D. Zhang Decl. After the trial, SIETAC sent another notice to Respondent, informing it of the hearing by default and offering it another opportunity to submit a defense or cross-examine the evidence. Respondent again failed to respond.

18. The SIETAC arbitration tribunal issued the Arbitral Award on December 10, 2013. Respondent has not made any payments pursuant to the Arbitral Award.

PETITION TO CONFIRM FOREIGN ARBITRATION AWARD

19. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “Convention”), incorporated into the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 201-208, governs this case. Under 9 U.S.C. § 207,

“Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The *court shall confirm the award* unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.” (emphasis added).

20. A court has jurisdiction under the Convention when an action or proceeding “falls under” the Convention. 9 U.S.C. § 203. An action falls under the Convention when the following four factors are met: (1) there is an agreement in writing; (2) the agreement provides for arbitration in the territory of a signatory of the Convention; (3) the agreement arises out of a legal relationship, whether contractual or not, which is considered commercial; and (4) a party to the agreement is not an American citizen, or

1 that the commercial relationship has some reasonable relation with one or
2 more foreign states. 9 U.S.C. §§ 202; *Balen v. Holland America Line Inc.*,
3 583 F.3d 647, 654-55 (9th Cir. 2009).

4 21. If a court has jurisdiction under the Convention, it must confirm
5 an arbitration award unless it determines that one of the grounds for refusal
6 or deferral of recognition or enforcement of the award specified in the
7 Convention applies. *Polimaster Ltd. v. RAE Systems, Inc.*, 623 F.3d 832,
8 835-36 (9th Cir. 2010); 9 U.S.C. § 207. The grounds for refusal or deferral
9 under the Convention are: (1) the parties to the agreement were under some
10 incapacity or the agreement is not valid under the laws the parties have
11 subjected it to; (2) the party against whom the award was invoked did not
12 receive proper notice; (3) the award contains decisions on matters outside the
13 scope of the arbitration agreement; (4) the composition of the arbitral
14 authority was not in line with the agreement of the parties or was not in line
15 with the law under which the award was made; and (5) the award is not
16 binding on the parties, or it has been set aside by a competent authority in the
17 country where it was made. 21 U.S.T. 2517, Art. V. §§ 1(a)-(c).

18 22. The party opposing the confirmation of the arbitration award
19 bears the “heavy burden” of showing that a ground for refusal or deferral
20 applies. *CEEG (Shanghai) Solar Science & Technology Co., Ltd. v. Lumos*
21 *LLC*, Case No. 14-cv-03118-WYD-MEH, 2015 WL 3457853, *4 (D. Colo.
22 May 29, 2015).

23 23. Here, all four of the above-mentioned factors are met and the
24 Arbitration Provision “falls under” the Convention. First, there is a written
25 arbitration agreement in the written Sales Contracts supplementing the
26 Distribution Contract between Petitioner and Respondent. The Arbitration
27 Provision applies to “all disputes in connection with [the Sales Contract] or the
28

1 execution thereof” and therefore encompasses Petitioner’s claims against
2 Respondent. Second, the Sales Contracts provide for arbitration in China, a
3 signatory of the Convention. Third, the Sales Contracts arose out of a legal,
4 commercial relationship between Petitioner and Respondent wherein the
5 parties contracted for the manufacture and sale of Modules. Fourth, Petitioner
6 is not an American citizen. Because the four factors are met, this Court has
7 jurisdiction under the Convention and must enforce the Arbitral Award.

8 24. In compliance with 9 U.S.C. § 207, this Petition is brought within
9 three years after the Arbitral Award was made on December 10, 2013.

10 25. None of the enumerated grounds for refusal or deferral apply in
11 this case. There is no evidence of any incapacity of the parties or invalidity of
12 the arbitration agreement. Throughout the SIETAC arbitration proceeding,
13 Respondent received multiple notices pursuant to the SIETAC Arbitration
14 Rules. *See* China International Economic and Trade Arbitration Commission
15 Shanghai Commission Arbitration Rules (Effective as from May 1, 2012).²
16 Respondent confirmed that it was adequately notified by responding and
17 engaging in the arbitration. Because the Arbitration Provision in the Sales
18 Contracts governs “all disputes in connection with [the Sales Contracts] or the
19 execution thereof,” the Arbitral Award does not contain decisions outside of
20 the scope of the agreement. The composition of the arbitral tribunal was
21 finalized in accordance with SIETAC Arbitration Rules and both parties had
22 opportunity for input. Lastly, the Arbitral Award is binding on the parties per
23 the terms of the Arbitration Provision and it has not been set aside by any
24 authority.

25 26. Because no ground for refusal or deferral applies, 9 U.S.C. § 207
26 mandates that this Court confirm the Arbitral Award.

27
28 ² http://www.shiac.org/upload/day_130413/201304130221249912.pdf

1 **WHEREFORE**, Petitioner petitions this Court for an order:

2 A. Confirming the Arbitral Award issued by SIETAC on December
3 10, 2013 against Respondent;

4 B. Awarding the Petitioner damages in the following amounts:

5 (i) \$1,000,000.00, representing the principal amount awarded
6 to Petitioner under the Arbitral Award, plus interest awarded by SIETAC,
7 RMB 1,132,093.00 as of December 10, 2013, and interest in the amount of
8 RMB 808,776.98, calculated at the applicable rate under the Arbitral Award
9 from December 10, 2013 through the date of the filing of this petition;

10 (ii) RMB 520,900.00, representing the currency exchange loss
11 awarded to Petitioner under the Arbitral Award;

12 (iii) RMB 185,955.80, representing the attorneys' fees awarded
13 to Petitioner under the Arbitral Award; and

14 (iv) RMB 186,283.00 representing the arbitration fees awarded
15 to Petitioner under the Arbitral Award;

16 C. Awarding Petitioner post-judgment interest, pursuant to 28
17 U.S.C. § 1961, that may become due and owing to Petitioner from Respondent
18 after this Petition has been granted and judgment has been entered in this case;
19 and

20 D. Awarding Petitioner such other and further relief as may be just,
21 proper, necessary, and in conformity with the Arbitral Award.

22 Dated: September 18, 2015

23 PILLSBURY WINTHROP SHAW
24 PITTMAN LLP

25
26 By: /s/ Justin L. Brossier
27 Justin L. Brossier
28 Attorneys for Petitioner
 CEEG (SHANGHAI) SOLAR SCIENCE
 & TECHNOLOGY CO., LTD.